

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PLUMBING BOARD AND
THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Review and
Approval of Good Cause Exempt Rules
Relating to the Plumbing Code,
Minnesota Rules, Parts 4715.2800,
4715.2810, 4715.2830, 4715.2880,
4715.2890, and 4715.3130

**ORDER ON REVIEW
OF RULES UNDER
MINN.STAT. § 14.388
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge (ALJ) Richard C. Luis upon the application of the Minnesota Plumbing Board (Board) and the Department of Labor and Industry (Department) for a legal review under Minn. Stat. § 14.388.

On March 19, 2012, the Department filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.388 and Minn. R. 1400.2400. The Notice of Intent to Adopt Rules provided for a public comment period ending March 26, 2012, and a comment was filed that day. The Department replied to the comment on April 2, 2012, and this rulemaking record closed that day.

Based on a review of the written submissions, and for the reasons set out in the Memorandum which follows below,

IT IS ORDERED THAT:

1. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
2. Under Minn. Stat. § 14.388, subd. 1(4), the Board and Department have the statutory authority to adopt these proposed rules using the exempt rulemaking process because the rules do not alter the sense, meaning or effect of a rule.
3. The adopted rules are **APPROVED**.

Dated: April 6, 2012

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The rules renumber six Plumbing Code provisions and move them to a new Chapter of the Department's Building Code Rules concerning code administration.

In a comment filed March 26, 2012, Bradley Erickson asserted that moving the rules from the Plumbing Code to Chapter 1300 (State Building Code) would render the rules unenforceable on a statewide basis because the Plumbing Code is enforceable statewide, whereas the Building Code is enforceable only if a municipality adopts it.

The Department argues, and the ALJ agrees, that the rule parts being moved (but not amended or otherwise altered) are about code administration. Moving those rules from the Plumbing Code to the Building Code does not change the substantive impact of the Plumbing Code, and is consistent with the Department's existing authority to enforce the Plumbing Code and all other parts of the State Building Code.

As noted in the Department's reply comment filed April 2, 2012, Chapter 1300 is used for the purpose of State Building Code administration, including administration of individual Building Code Chapters that have statewide applicability (including the Plumbing Code).

The Board emphasizes that it considered carefully whether the subject matter of the six rule parts being moved relate to code administration, and determined that they do. Likewise, the Department considered carefully where, in the Building Code, that rules pertaining to administration of the Plumbing Code should be placed.

The Administrative Law Judge agrees with the Plumbing Board – the six parts moving into the Building Code relate to Plumbing Code administration, and it is permissible to place them in the Building Code at the place determined appropriate by the Department of Labor and Industry.

Mr. Erickson is concerned that the definition of "Administrative Authority" in the Building Code removes the Department's authority to enforce the Plumbing Code. The agencies disagree, and the ALJ agrees with them. The Department's enforcement authority over the Plumbing Code is granted by statute, and Minnesota Statutes are not affected by this rulemaking. See Minn. Stat. § 326B.106.

R. C. L.